

U.S. Senate
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Committee

Larry E. Craig, Chairman
Jade West, Staff Director
No. 2

Legislative Notice

Editor, Judy Gorman Prinkey

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S. 280 — Education Flexibility Partnership Act

Calendar No. 12

Reported from the Committee on Health, Education, Labor and Pensions on January 28, 1999, with one amendment. No committee report.

NOTEWORTHY

- The Senate likely will begin consideration of S. 280 on Tuesday, March 2.
- Senator Lott may file a cloture petition on the motion to proceed to S. 280 due to a possible objection by Senator Wellstone. Additionally, expect Senators Kennedy and Harkin to offer amendments on 100,000 teachers and on school construction.
- Senator Lott has asked Senators on both sides of the aisle to consider withholding education amendments not relevant to this bill and offer them instead to the Elementary and Secondary Education Act Amendments (ESEA), which likely will come before the Senate for reauthorization this summer.
- S. 280 would allow all 50 states to participate in what is now a demonstration project for only 12 states, allowing them exemption from certain burdensome federal regulations that interfere with local efforts to improve education.
- The bill is budget-neutral, as defined by the Congressional Budget Office.
- The National Governors' Association endorses the legislation.
- The House is expected to mark up their version of Ed-Flex next week with likely floor consideration soon thereafter.

HIGHLIGHTS

- S. 280 would exempt states from burdensome Washington regulations that interfere with local efforts to improve education.
- The bill provides states with federal statutory and regulatory waivers specific to education, upon authorization of the Secretary of Education.
- These waivers could take effect as early as fiscal year 2000 and would sunset in fiscal year 2004.
- To be eligible for federal education waivers, states must also agree to waive their own state education statutes and regulations, with certain exceptions.
- "Ed-Flex" was first authorized as a demonstration project for six states in 1994. It was expanded to 12 states in the 1996 appropriations process.
- "Ed-Flex" is currently utilized by Colorado, Illinois, Iowa, Kansas, Maryland, Massachusetts, Michigan, New Mexico, Ohio, Oregon, Texas, and Vermont.
- S. 280 would open this demonstration project to all 50 states.

BACKGROUND

The federal government provides only 7 percent of local school funding but demands 50 percent of all school paperwork. This paperwork burden demands nearly 49 million hours each year or the equivalent of 25,000 employees working full time on paper, not students. According to Florida's former Commissioner of Education, it takes six times as many employees to administer a federal dollar as a state dollar.

S. 280, the Education Flexibility Partnership Act finds that —

"States differ substantially in demographics, in school governance, and in school finance and funding. The administrative and funding mechanisms that help schools in one State improve may not prove successful in other States.

"Although the Elementary and Secondary Education Act of 1965 and other Federal education statutes afford flexibility to State and local educational agencies in implementing Federal programs, certain requirements of Federal education statutes or regulations may impede local efforts to reform and improve education.

"By granting waivers of certain statutory and regulatory requirements, the Federal Government can remove impediments for local educational agencies in implementing educational reforms and raising the achievement levels of all children.

"State educational agencies are closer to local school systems, implement statewide educational reforms with both Federal and State funds, and are responsible for maintaining accountability for local activities consistent with State standards and assessment systems. Therefore, State educational agencies are often in the best position to align waivers of Federal and State requirements with State and local initiatives.

"The [current] Education Flexibility Partnership Demonstration Act allows State educational agencies the flexibility to waive certain Federal requirements, along with related State requirements, but allows only 12 States to qualify for such waivers.

"Expansion of waiver authority will allow for the waiver of statutory and regulatory requirements that impede implementation of State and local educational improvement plans, or that unnecessarily burden program administration, while maintaining the intent and purposes of affected programs, and maintaining such fundamental requirements as those relating to civil rights, educational equity, and accountability.

"To achieve the state goals for the education of children in the State, the focus must be on results in raising the achievement of all students, not process."

While currently only 12 states are eligible for "Ed Flex" waivers, these 12 states clearly demonstrate the benefits of state and local education flexibility. For example:

- The Phelps Luck Elementary School in Howard County, Maryland, used its waiver to provide one-on-one tutoring for reading students who have the greatest need in grades 1-5. They also used their waiver to lower the average student/teacher ratio in mathematics and reading from 25/1 to 12/1. By granting localities more flexibility to use resources already allocated, Ed-Flex allows local decision-makers to decide for themselves how to best tailor federal programs to meet the needs of their own schools.
- Achievement scores from Texas, the state which has implemented "Ed-Flex" most broadly, confirm that it can improve academic performance. After only two years of implementation, preliminary statewide results on the Texas Assessment of Academic Skills (TAAS) show that districts with waivers outperformed districts without waivers 87 percent to 84 percent in reading and 82.6 percent to 80.2 percent in math. For African-American students, the gains were even larger. For example, at Westlawn Elementary School in La Marque, Texas, an Ed-Flex school, African-American students improved almost 23 percent over their 1996 math test scores with 82 percent of students passing. The statewide average was a measly 64 percent.
- Texas also utilized a statewide waiver to allow more flexible use of federal teacher training funds so that districts can better direct professional development dollars to those areas where they are needed most.
- In Massachusetts, a school that had been eligible for Title I funding in the past was ineligible for the 1997-98 school year but was expected to be eligible again for 1998-99. Massachusetts was able to use Ed-Flex waiver authority to give the school a one-year waiver and assure continuity of service rather than disrupt services for a year.

BILL PROVISIONS

Section 1: Short Title

Section 2: Findings

Section 3: Definitions

Section 4: Education Flexibility Partnership

- Gives the Secretary of Education the power to grant states the authority to waive certain federal statutory or regulatory requirements burdening either the state or local education agencies. This authority begins in fiscal year 2000 and sunsets in fiscal year 2004.
- To be eligible, states must waive their own education statutes and regulations and must have made "substantial progress, as determined by the Secretary [of Education] toward developing and implementing" challenging state content standards and assessments (as described in section 1111(b) of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 6311]).
- States may not have waiver authority for a period exceeding five years. However, the Secretary may extend such authority if it is determined to be "effective" in "carry[ing] out local reform plans."
- Periodic reviews of performance are authorized so that the Secretary can determine that a state's performance "justifies continuation of such [waiver] authority."
- States may grant federal statutory and regulatory waivers for the following programs:
 - Title I of the Elementary and Secondary Education Act of 1965 (ESEA);
 - Part B of Title II of ESEA: This section deals with state grants for improved teaching and learning through professional development in areas of core academics;
 - Subpart 2 of Part A of Title 3 of ESEA: This section deals with state grants for development and expansion of technology that "supports the school reform movement;"
 - Title IV of ESEA: This section deals with Safe and Drug Free Schools;
 - Title VI of ESEA: This section deals with Innovative Education Program Strategies. This program was designed to assist states and localities in efforts to accomplish the National Education Goals as well as providing funding for "promising educational reform programs" and the "special educational needs of at-risk and high cost students;"
 - Part C of Title VII of ESEA: This section deals with immigrant education; and

- The Carl D. Perkins Vocational and Technical Education Act. This law seeks to “make the United States more competitive in the world economy by developing more fully the academic and occupational skills of all segments of the population.” [20 U.S.C. 2301]
- Waivers may not be granted for the following:
 - maintenance of effort;
 - comparability of services;
 - equitable participation of students and professional staff in private schools;
 - parental participation and involvement;
 - distribution of funds to states or to local education agencies;
 - use of Federal funds to supplement, not supplant, non-federal funds; and
 - applicable civil rights requirements.
- Current “Ed-Flex” states will not be required to reapply to maintain their waivers.
- When a state seeks extension of its “Ed-Flex” waiver authority, the Secretary of Education is required to measure the state’s and its localities’ progress in achieving the “purposes and overall expected results” when those agencies first applied for waiver authority. [section 4(a)(4)(A)(ii)]

POSSIBLE AMENDMENTS

Senator Lott has asked Senators on both sides of the aisle to consider withholding education amendments not relevant to this bill and offer them instead to the Elementary and Secondary Education Act Amendments (ESEA), which likely will come before the Senate for reauthorization this summer.

Likely amendments:

Harkin/Kennedy.	School construction
Kennedy/Murray.	100,000 teachers
Kennedy.	Mandates greater paperwork accountability on the states and localities
Managers’ amendment.	Will include a non-prescriptive requirement of public notice, a regular report from the Secretary of Education to Congress on Ed-Flex results, and other technical clarifications
Reed.	Thirty-day public notice before state could waive federal regulations
Reed.	Increased student achievement

Reed. Forestalls date of enactment until Secretary submits report to Congress

Wellstone. Motion to recommit

Wellstone. Excludes Title I from allowable federal waiver

Wellstone. Limits states' ability to get waiver by mandating that the Secretary of Education "thoroughly explain, and make public, his reasons for granting waiver authority."

Other rumored amendments:

Bingaman. Drop out prevention

Bingaman. Mandates increased state efforts for greater teacher qualification

Boxer. Increases after-school programs

Dodd. Authorizes a grant program to combat truancy

Kennedy. Student loans

Murray. FMLA extension

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